

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

PATRICIA I. CALLINS,

Plaintiff,

v.

**SWIFT TRANSPORTATION CO. OF
ARIZONA, LLC,**

Defendant.

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No. 3:17-cv-1975-C-BN

**DEFENDANT’S MOTION TO DEEM PLAINTIFF’S APPEAL AS NOT TAKEN IN
GOOD FAITH**

Defendant Swift Transportation Co. of Arizona, LLC. (“Swift”) hereby moves the Court for an order pursuant to Federal Rule of Appellate Procedure (“FRAP”) 24(a)(3)(A) certifying that Plaintiff Patricia I. Callins’ appeal of the Court’s dismissal of Plaintiff’s defamation claims against Swift is not taken in good faith. Swift has attempted to confer on this Motion with Plaintiff but has received no response so presumes Plaintiff opposes the Motion.

On September 7, 2018, the Court entered its “Order Accepting Findings and Recommendation of the United States Magistrate Judge” (Docket # 60) (“Order”), dismissing Plaintiff’s defamation claims against Swift with prejudice pursuant to the provisions of the Texas Anti-SLAPP Act, codified as Chapter 27 of the Texas Civil Practices and Remedies Code (the “Act”). The same day, the Court entered its “Rule 54(b) Judgement” (Docket # 61) (“Judgement”) making the judgment final only as to Plaintiff’s defamation claim. Plaintiff filed her “Notice of Appeal” of the Order and the Judgement on September 27, 2018 (Docket # 62); and that same day filed a “Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis” (Docket # 63). Plaintiff previously was allowed to proceed in forma pauperis (“IFP”)

in this Court by Order entered by the Court on July 27, 2017 (Docket # 4).

FRAP 24(a)(3) allows a party like Plaintiff to proceed IFP on appeal if she was permitted to proceed IFP in the district-court action unless the district court “certifies that the appeal is not taken in good faith” In this case, the Court dismissed Plaintiff’s defamation claim based on the evidence and argument set forth by Swift in its “Anti-SLAPP Motion to Dismiss” (Docket # 34) and related filings. Plaintiff was allowed additional time to respond and was allowed to file a sur-reply. In the “Findings, Conclusions, and Recommendation of the United States Magistrate Judge” (Docket # 48) adopted by the Court in its Order, the Magistrate Judge found clearly that Plaintiff’s claims were based on Swift’s protected speech to the Texas Workforce Commission during unemployment benefit determination proceedings, which is exactly the type of speech protected by the Act. The Magistrate Judge further found that Plaintiff’s allegations were conclusory and that, even with the additional time and leeway allowed Plaintiff by the Court to define her claim, Plaintiff failed to allege specifically what was said that was supposedly defamatory such that Plaintiff failed to meet her burden under the applicable statutes and standards. The Magistrate Judge further determined that Plaintiff’s defamation claim could not have survived a motion to dismiss under the standards applicable to Rule 12(b)(6).

For Plaintiff to mount a good faith appeal of the Court’s ruling she must at a minimum be able to show that the Court improperly found that the statements made by Swift were not defamatory. Plaintiff’s inability or failure to identify to this Court any statement at all made by Swift that she contends was defamatory forecloses any possibility of such a showing on appeal. Therefore, Plaintiff’s appeal cannot be considered to be taken in good faith. Accordingly, Swift asks for an order certifying as much and denying Plaintiff any right to proceed IFP on appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Plaintiff Patricia I. Callins, 4725 Forbes Court, Fort Worth, Texas 76105. Ipc2u2@gmail.com.

/s/ Gerald G. Howard
GERALD G. HOWARD